

# **Exhibit F**

CECILIA D'ANASTASIO CULTURE 09.10.2021 05:33 PM

## Epic Leaves a Big Crack in Apple's Walled Garden

A judge ordered significant changes to the App Store today, but the fight between Epic Games and Apple isn't over yet.



PHOTOGRAPH: BLOOMBERG/GETTY IMAGES

**ON FRIDAY, AFTER** a contentious legal battle over Apple's alleged monopoly power over the iOS ecosystem, a California judge snipped the tug-of-war rope between Apple and Epic Games. Both sides can claim some victory. Epic Games must pay over \$3.5 million to Apple after violating its developer agreements by circumventing its payment processor. And Apple must change its App Store rules to allow developers to use other payment systems—a blow to Apple's iron grip on the iOS ecosystem.

Although both companies leave the lengthy trial with their own shreds of success, the fabric of Apple's App Store could be forever changed. Soon, App Store users could have a bounty of options to pay developers for their digital products—including, perhaps, some that don't charge those developers a commission.

The \$100 billion global market for mobile gaming is considered the most lucrative frontier for the games industry. Apple's share of that market is huge—over 55 percent, the court found. Much of that market power comes from Apple's vertical integration of its systems: the Apple iPhones, the Apple App Store, and the Apple iOS operating system. If their apps are approved by Apple, developers have a platform to reach almost a billion iPhone users. But in exchange they have been required to use the company's payment processing service for most digital transactions. What Epic took issue with, loudly and vigorously, was the 30 percent commission Apple skimmed off these purchases—what the *Fortnite* developer called a “monopoly tax.”

When it [filed its lawsuit](#) against Apple last August, Epic claimed that the company had architected an “unreasonable and unlawful” monopoly in violation of antitrust laws. Apple, for its part, says it requires developers to use its payment system to ensure customers' security and ease of use.

Apple's 30 percent commission is standard, but not vital to its business operations. Maybe it's not even warranted. In late 2020, in part inspired by the suit, Apple launched its Small Business program, reducing that commission to 15 percent for developers earning less than \$1 million through the App Store. (Other digital marketplaces, including Epic Games', have lowered their commissions to 12 percent.)



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Although Epic Games framed its crusade for a more open ecosystem as an ideological battle, US district judge Yvonne Gonzalez Rogers cut through the \$28.7 billion company's publicity-speak in her Friday decision. “The size of this market explains Epic Games' motive in bringing this action,” she wrote. “Having penetrated all other video game markets, the mobile gaming market was Epic Games' next target and it views Apple as an impediment.” Despite its extraordinarily high profits, Apple, she found, does not monopolize the mobile gaming market in the eyes of federal antitrust law. She accepted Apple's argument that its tight control over the App Store is vital for security and to differentiate iOS from the more laissez-faire environment of Android. “Success is not illegal,” she determined, rejecting Epic's grand bid to force Apple to allow other app stores—like the Epic Game Store—to set up shop within iOS.

But Apple didn't fare as well when Rogers turned her analysis to California's Unfair Competition Law. Under that statute, Rogers concluded that Apple must stop prohibiting app developers from communicating to users, either within the app or outside of it, about alternative payment methods. That policy, she ruled, “illegally stifle[s] consumer choice” by hiding information from consumers, while unfairly shielding Apple from price competition.

If you're having trouble seeing why the same conduct can count as anticompetitive under California law but not federal antitrust law, you're not alone. Multiple antitrust experts suggested that Rogers' ruling is logically inconsistent.

"I don't know how you square all of that analysis, and all of the pro-competitive justifications Apple has for its closed ecosystem, with the judge then saying, 'But I'm going to force Apple to permit competitors to put up signpost in Apple's ecosystem,'" says Paul Swanson, an antitrust attorney in Denver. "I don't see how those two things go together."

Epic Games CEO Tim Sweeney might agree. In a pugnacious tweet Friday, Sweeney said, "Today's ruling isn't a win for developers or for consumers. Epic is fighting for fair competition among in-app payment methods and app stores for a billion consumers." The Verge reports that Epic plans to appeal the verdict. (Epic Games did not respond to a request for comment.) *Fortnite* won't be back on iOS until "Epic can offer in-app payment in fair competition with Apple in-app payment, passing along the savings to consumers," Sweeney tweeted.

Games industry and antitrust experts say the ruling is impactful, but not surprising. "It was very much an uphill battle for Epic to win the case," says Florian Ederer, associate professor of economics at the Yale School of Management. At the same time, he says, the ruling was foreshadowed by growing international scrutiny over Apple's anti-steering provisions. In August, South Korean regulators approved a bill forcing Apple and Google, a defendant in another Epic-led case, to allow payment systems other than their own. Days later, Japan's Fair Trade Commission closed its investigation into Apple's App Store, determining that Apple must let so-called reader apps—which include the likes of Netflix, Spotify, and Amazon Kindle—encourage users to sign up, and potentially make payments, through those companies' own websites. Rogers' ruling could have a much bigger financial impact, however, because, as her opinion notes, the vast majority of App Store payments come from gaming apps.

Within 90 days, App Store developers will be able to circumvent the 30 percent commission by adding in-app buttons or links to their own websites with their own payment systems. "Developers aren't going to get *all* of that—they're not going to entirely circumvent that 30 percent," says Ederer. "But that's a big win for developers." He theorizes that any more cash surplus could act as a developer incentive to help ship more products or maintain them for longer, even if some users choose to take the easy route and go through Apple's in-app payment system.

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More payment systems can bring confusion, the stated enemy of Apple's streamline-obsessed enterprise. "In the long term, with the absence of a vertically integrated platform, you're going to have lots of different payment providers trying to get your business," says Joost van Dreunen, a New York University Stern School of Business lecturer and author of *One Up*, a book on the global games business. "They're all going to be fighting on the margin. There will be a growing number of transactors and payment processors trying to get a piece." That may confuse users accustomed to "click and go" or "swipe here, done" systems. And with new payment processing systems, users may feel there is less transparency and trust in an already opaque, complicated digital market.

While Epic Games won a major on-the-ground battle, Apple may have won its moral one: Apple can claim users are not trapped in its iOS ecosystem so much as inhabiting it. “Today the Court has affirmed what we’ve known all along: the App Store is not in violation of antitrust law,” an Apple spokesperson said in a statement. “Apple faces rigorous competition in every segment in which we do business, and we believe customers and developers choose us because our products and services are the best in the world.”

The ruling is another crack in Apple’s walled garden. “It’s starting to show some wear and tear,” van Dreunen says. “It’s not the pristine, impervious organization it thought it would be.” And if today’s ruling is indeed appealed, its fight isn’t over yet.

*Additional reporting by Gilad Edelman.*

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[Cecilia D'Anastasio](#) is a staff writer at WIRED covering the games industry and gaming culture. She was previously a senior reporter at Kotaku, G/O Media's video game vertical. Send tips to [Cecilia\\_D@WIRED.com](mailto:Cecilia_D@WIRED.com).

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